

### Chapter highlights

- **Purpose:** This chapter sets forth the guidelines that agencies and institutions will follow to protect the trust established between procurement officials and citizens of the Commonwealth, and to establish fair and equal treatment of all suppliers who are interested in doing business with the Commonwealth.
- **Key points:**
  - VITA is committed to maintaining procurement processes which are fair, ethical, non-biased and in strict compliance with the laws of the Commonwealth.
  - Procurement professionals have the responsibility to ensure that all information and documentation relative to the development of a solicitation or contractual document for a proposed procurement remains confidential until successful completion of the procurement process.

### Table of contents

5.0	Introduction
5.1	Responsibilities of procurement professionals
5.1.1	Confidentiality
5.1.2	Ethics
5.1.3	Collusion awareness
5.2	Expectations of VITA's suppliers
Appendix A	VITA SCM Confidentiality & Conflict of Interest Statement

### 5.0 Introduction

Each fiscal year, the Commonwealth of Virginia spends in excess of \$1 billion for information technology (IT) and telecommunications goods and services. VITA's Supply Chain Management (SCM) Division is responsible for establishing contracts to meet agencies' needs for IT goods and services and for delegating procurement authority back to agencies, where appropriate. Since these contracting efforts involve the expenditure of significant tax dollars, a trust is created between procurement officials and the citizens of the Commonwealth.

This chapter outlines VITA's guidelines regarding behavior of procurement professionals and suppliers in the procurement of information technology and telecommunications goods and services in order to ensure that the public's trust is upheld. The *Code of Virginia* dictates a higher standard of conduct for procurement officials than for other public employees due to the extraordinary trust and responsibility exercised by public officials conducting procurement transactions, and because of the legitimate expectation by the public that this trust and responsibility be exercised properly. Procurement professionals and suppliers must be cognizant of these laws which include the Virginia Public Procurement Act, the State and Local Government Conflict of Interests Act, and the Governmental Frauds Act. All personnel having official responsibility for procurement transactions should be familiar with Article 4, *Code of Virginia*, [§2.2-4377](#), entitled "Ethics in Public Contracting."

VITA expects all procurement professionals to conduct themselves with integrity and in a manner above reproach, with complete impartiality and without preferential treatment to maintain the public trust. All procurement professionals should avoid acts which are improper, illegal or give the appearance of impropriety and shall pursue a course of conduct

that does not raise any appearance of impropriety or suspicion among the public or potential Commonwealth suppliers.

## **5.1 Responsibilities of procurement professionals**

### **5.1.1 Confidentiality**

Procurement professionals have a duty to maintain certain information as confidential before and during the course of a solicitation. Procurement professionals have the responsibility to ensure that all information and documentation relative to the development of a solicitation or contractual document for a proposed procurement remains confidential until successful completion of the procurement process. All information and documentation relative to the development of a specification or requirements document will be deemed confidential in nature by the procurement professional until award of a contract. A confidentiality statement required for signature by all project procurement team members is available in Appendix A.

### **5.1.2 Ethics**

All Commonwealth procurement professionals are subject to [§2.2-4367](#) et seq of the *Code of Virginia*: Ethics in Public Contracting and State and Local Government Conflict of Interests Act ([§2.2-3100](#) et seq.), the Virginia Governmental Frauds Act (§18.2-498.1 et seq.) and Articles 2 (§18.2-438 et seq.) and 3 (§18.2-446 et seq.) of Chapter 10 of Title 18.2. VITA's procurement professionals and those acting on behalf of any VITA-delegated agency procurement shall:

- Abide by the National Institute of Governmental Purchasing, Inc (NIGP) Code of Ethics.
- Exhibit the highest ideals of honor and integrity in all public and personal relationships in order to merit the respect and inspire the confidence of the Commonwealth's agencies and suppliers and the citizens being served.
- Provide and foster a procurement environment where all business concerns, large or small, majority or minority-owned are afforded an equal opportunity to compete for the Commonwealth's business.
- Avoid the intent and appearance of unethical or compromising practices in actions, relationships and communications, while also avoiding the appearance of impropriety or any action which might reasonably result in the perception of impropriety.
- Conduct all procurement activities on behalf of the Commonwealth in accordance with the laws of the Commonwealth, obeying all relevant laws and remaining alert to any and all legal ramifications of procurement decisions.
- Refrain from any private or professional activity that would create a conflict between personal interests and the interests of the Commonwealth as defined in §2.2-3106 and §2.2-4367 et seq. of the Code of Virginia, avoiding any appearance of a conflict and continually evaluating their outside interests which have the potential of being at variance with the best interests of the Commonwealth.
- Promote positive supplier relationships through professionalism, responsiveness, impartiality and objectivity in all phases of the procurement cycle.
- Enhance the proficiency and stature of the Commonwealth's purchasing community by adhering to the highest standards of ethical and professional behavior.

VITA procurement professionals and those acting on behalf of any VITA-delegated agency procurement shall not:

- Engage in outside business or employment by any outside company that might encroach upon their primary responsibilities as a procurement officer of the Commonwealth;
- Engage in any private or business relationship or activity that could result in a conflict of interest or could reasonably be perceived as a conflict of interest;

- Engage in business with, or employment by a company that is a supplier to the Commonwealth;
- Lend money to or borrow money from any Commonwealth supplier;
- Maintain a significant interest in a firm that does business with VITA;
- Provide inside information to prospective bidders;
- Accept trips, lodging, meals, or gifts from suppliers;
- Accept meals, beverages, tickets to entertainment and/or sporting events or any other item which could be construed as having more than nominal value. (An officer/employee could accept food/refreshments of relatively low value provided during the course of a meeting sponsored by a supplier.)

### **5.1.3 Collusion awareness**

As procurement watchdogs and citizens of the Commonwealth, procurement professionals have a duty to prevent and report collusion between suppliers competing for the Commonwealth's business. The purpose of the antitrust laws is to promote the free market system in the economy of this Commonwealth by prohibiting restraints of trade and monopolistic practices that decrease competition. The following could be construed as collusive activity or suspected antitrust violations:

- Any agreement or mutual understanding among competing firms that restrains the natural operation among market forces is suspect;
- Existence of an "industry price list" or "price agreement" to which suppliers refer in formulating their offers;
- Sudden change from competitive bidding to identical bidding;
- Simultaneous price increases or follow-the-leader pricing;
- Rotation of bids or proposals so that each offeror takes a turn as the low bidder;
- Division of the market so that certain competitors bid low only for contracts led by certain agencies or for contracts in certain areas or on certain products;
- Establishment by competitors of collusive price estimating systems;
- Incidents suggesting direct collusion. (Assertion by employees of a supplier, etc., that an agreement to restrain trade exists.);
- Identical bids that appear to be the result of collusion.

Practices that eliminate or restrict competition usually lead to excessive prices and may warrant criminal, civil, or administrative action by the Commonwealth against the supplier. Procurement personnel are an important source of investigating leads and recognizing possible antitrust or collusion violations. As a result, procurement personnel should therefore be sensitive to indications of unlawful behavior by suppliers, supplier's contractors, and other procurement, technical, or administrative personnel. Suspected antitrust or collusive activities shall be reported to the Office of the Attorney General, or to the agency's attorney advisor including any bids or proposals that show evidence or suspicion that an antitrust law violation has occurred. (See *Code of Virginia*, §§ [59.1-9.1](#) through [59.1-9.8](#) and §§ [59.1-68.6](#) through [59.1-68.8](#)).

### **5.2 Expectations of VITA's suppliers**

VITA expects its technology and telecommunications suppliers to deal with public officials in a manner that upholds the expectations of the public and reassures their confidence in the public procurement process. To that end, VITA expects suppliers to:

- Avoid all situations where propriety or financial interests, or the opportunity for financial gain, could lead to favored treatment for any organization or individual;
- Avoid circumstances and conduct that might not constitute actual wrongdoing, or a conflict of interest, but might nevertheless create the appearance of impropriety, thus compromising the integrity of VITA and the Commonwealth;

- Avoid offering or providing any interest, financial or otherwise, direct or indirect, in the business of the supplier or professional activity in which the supplier is involved with the officer or employee;
- Avoid causing or influencing, or attempting to cause or influence any Commonwealth officer or employee in his or her official capacity in any manner which might tend to impair the objectivity or independence of judgment of that officer or employee;
- Avoid offering any Commonwealth/VITA employee any gift, favor, service or other item of value under circumstances from which it might be reasonably inferred that such, gift, service or other item of value was given for the purpose of influencing the recipient in the discharge of his or her official duties;
- Accept responsibility for representations made on behalf of their company by employees or agents;
- Provide accurate and understandable pricing, schedules and terms and conditions;
- Treat competitors and employees of the Commonwealth with respect and professionalism, refraining from making any disparaging comments or accusations;
- Refrain from providing misleading information or unfavorable implications about a competitor's products or services.

**NON-COLLUSION REQUIREMENT:** Neither supplier nor any member, representative or employee of the supplier's organization shall enter into any combination, collusion or agreement with any person relative to any price to be bid. They shall not prevent any person from bidding nor induce anyone to refrain from bidding. Bids shall be made without reference to any other bid and without any agreement, understanding or combination that would serve to restrict competition.

**Appendix A - Procurement Project/Evaluation Team**  
**Confidentiality and Conflict of Interest Statement**

[Project Name/Solicitation #]

I, \_\_\_\_\_ (print name clearly), hereby certify that I have provided all required information on this form to the best of my knowledge and agree to the following confidentiality and conflict of interest protocols for the subject project/solicitation. I further certify that I have read and understand the attached Confidentiality and Conflict of Interest Guidelines.

For the purpose of these Statements, "Supplier" means any business entity/corporation/organization/firm/individual including any of its Affiliates (i.e., an entity that controls, is controlled by, or is under common control with Supplier) that submits an offer/proposal in response to this solicitation. "Supplier" also means "Offeror" or "Bidder."

*For the purpose of these Statements, "Supplier" means any business entity/corporation/organization/firm/individual including any of its Affiliates (i.e., an entity that controls, is controlled by, or is under common control with Supplier) that submits an offer/proposal in response to this solicitation. "Supplier" also means "Offeror" or "Bidder."*

**PART A - CONFIDENTIALITY STATEMENT**

1. I understand that information related to this project/solicitation and all proposals received shall be held in strict confidence.
2. I will not divulge any information pertaining to this project/solicitation or program, including but not limited to specific proposals, the number of proposals received and under review, or any other related documents.
3. I will cease communicating with Suppliers associated with this project/solicitation until Notice of Award is posted for this procurement.
4. I will limit all communication about or pertaining to this solicitation to only those individuals who have signed a Confidentiality and Conflict of Interest Statement for this solicitation/project. I will confirm this with this project's single point of contact (SPOC), identified as: \_\_\_\_\_ (provide SPOC name/e-mail address) prior to entering into any such communication.
5. My contact with the Suppliers will adhere to the communications protocol set forth in the RFP, which designates a SPOC for all supplier communication.
6. I agree not to meet with any potential or actual Supplier for any reason, without at least one other team member and the consent of the SPOC. I will not discuss the active procurement with a potential or actual Supplier.
7. If contacted by a potential or actual Supplier, I will refer the Supplier to the SPOC.
8. If I am contacted by any potential Supplier under the Freedom of Information Act, such requests will be forwarded to the SPOC immediately upon receipt.
9. I have read the provisions of the law identified in [Article 6](#) of the Virginia Public Procurement Act and subsection [2.2-4342](#), § D, entitled "Public inspection of certain records" and [2.2-4359](#), § D, delineated below:  
(a) [2.2-4342 D.](#) *Any competitive negotiation Supplier, upon request, shall be afforded the opportunity to inspect proposal records within a reasonable time after the evaluation and negotiations of proposals are completed but prior to award, except in the event that the public body decides not to accept any of the proposals and to reopen the contract. Otherwise, proposal records shall be open to public inspection only after award of the contract.*

(b) [2.2-4359 D.](#) *Nothing contained in this section shall be construed to require a public body, when procuring by competitive negotiation, to furnish a statement of the reasons why a particular proposal was not deemed to be the most advantageous.*

10. I will inform the SPOC of any concerns regarding inappropriate communication or any suspected breach of confidentiality.

END OF PART A – CONTINUE TO PART B

## PART B – CONFLICT OF INTEREST STATEMENT

1. I am not a director, officer, owner, partner, trustee, consultant or employee of any Supplier that has submitted a proposal/offer in response to this solicitation or of any Supplier that has expressed interest in bidding or being a subcontractor for this project.
2. Neither I, nor any member of my immediate family, including spouse, parents, children or siblings, have any direct investment, such as stocks or bonds, in any Supplier that has submitted a proposal/offer in response to this solicitation or any Supplier that has expressed interest in bidding or being a subcontractor for this project.
3. I have not received any income from, and I have not received any promise of income from, any Supplier that has submitted a proposal/offer in response to this solicitation or any Supplier that has expressed interest in bidding or being a subcontractor for this project in the twelve months preceding the date of execution of this Statement.
4. As of the date of execution of this Statement, I am not aware that any Supplier that has submitted a proposal/offer in response to this solicitation or any Supplier that has expressed interest in bidding or being a subcontractor for this project will give me income in the next twenty-four (24) months following the date of execution of this Statement.

OR—

I am disclosing the following interests in a Supplier that has submitted a proposal/offer in response to this solicitation or a Supplier that has expressed interest in bidding or being a subcontractor for this project:

---

---

---

5. I agree to inform the SPOC immediately if there is a change in regards to my answers to paragraphs 1 through 4 of this Conflict of Interest Statement.
6. I agree to inform the SPOC of any concerns regarding any suspected breach of this Conflict of Interest Statement by other members of the solicitation/project team.

**BY SIGNING BELOW, I ACKNOWLEDGE THE INFORMATION AND CERTIFICATIONS I HAVE GIVEN IN PART A AND PART B OF THIS STATEMENT:**

Signature: \_\_\_\_\_

Agency: \_\_\_\_\_

If Consultant, provide name of Company you represent and your role on this team:

\_\_\_\_\_

E-mail Address: \_\_\_\_\_

Date: \_\_\_\_\_

*END OF PART B – CONTINUE TO NEXT PAGE, PART C  
YOU ARE RESPONSIBLE FOR READING AND UNDERSTANDING THE FOLLOWING  
GUIDELINES AND HAVE SIGNED THIS STATEMENT TO THAT EFFECT.*

## **PART C - CONFIDENTIALITY AND CONFLICT OF INTEREST GUIDELINES**

### **Confidentiality**

For purposes of these guidelines, confidential data or information is to be broadly construed and includes:

1. all trade secrets and proprietary information so designated and submitted by Suppliers in their proposals/offers;
2. cost estimates;
3. any and all other data and/or information that discloses any aspect of the substance or detail of a proposal itself or the evaluation/scoring thereof, whether conveyed in writing or orally and any and all information derived therefrom.

Certain documents or section of the proposal responses may be protected from public view under the provision of the Virginia Public Procurement Act [§2.2-4342](#). The proprietary/confidential status must be maintained even after the evaluation process is complete.

Trade secrets or proprietary information must have FOIA protections invoked by the Supplier in writing identifying specific data or materials to be protected and state the reasons why protection is necessary. (Entire proposal, line item prices, and/or total proposal prices as proprietary or trade secrets is not acceptable and will result in rejection of the proposals.)

All state government procurements for goods and services must be conducted in a fair and impartial manner with avoidance of any impropriety or appearance of impropriety. All state employees having official responsibility for the procurement process shall conduct business above reproach in every respect. All third-party contractors/consultants participating in an IV&V and/or Subject Matter expert capacity in this project/solicitation shall conduct their participation above reproach in every respect.

Each Procurement Project/Evaluation Team Member involved in this project/solicitation must take all reasonable steps to ensure that others do not have unauthorized access to confidential data or information relating to such project/solicitation. Such steps include, but are not limited to, the following:

1. Team members, without exception, should forward to the SPOC any and all inquiries or comments regarding any procurement transaction that are received from any party, either internal or external to VITA. In addition, team members should explain to the party making such inquiry that the reason the inquiry is being forwarded to the SPOC is to ensure that the party receives the most up-to-date and accurate information available regarding the procurement process.
2. The confidential data or any information acquired or accessed in connection with this project/solicitation should not be used except for the purpose of evaluating Suppliers' proposals/offers. Furthermore, do not release, disseminate or otherwise disclose such data or information to any other party unless authorized by applicable law or required by court order to do so. If so authorized by applicable law or required by court order, notify the SPOC who is responsible for such disclosure.



3. The data and information contained in Suppliers' proposals/offers and any information derived therefrom (including working papers) shall, at all times, be used, maintained, transported and stored in a secure fashion unless the Procurement Project/Evaluation Team Member is actively using such data or information.
4. The data and information contained in Suppliers' proposals/offers and any information derived therefrom (including working papers) shall not be left unattended on conference room tables during meeting breaks unless the meeting room is locked and shall not be left unattended in office chairs, under desks or in any other place unless the room is locked.
5. The confidential data and information contained in Suppliers' proposals/offers, any and all oral discussion or comment relating to the confidential data and information and any information derived therefrom shall be maintained in the strictest confidence and shall not be released, sold, disseminated, transferred or otherwise disclosed by any means to any person, firm, corporation, or third party without the prior written approval of the SPOC.
6. No emails shall be sent to any person(s) regarding the data or information contained in Suppliers' proposals/offers or any information derived therefrom without the prior written approval of the SPOC.
7. The data and information contained in offerors' proposals/offers and any information derived therefrom shall be accessed and used only as necessary to evaluate Suppliers' proposals. The data and information contained in offerors' proposals and any information derived therefrom shall be used and/or accessed for no other reason and in no other way.
8. The data and information contained in Suppliers' proposals/offers and any information derived therefrom shall not be reproduced or copied by any means, in whole or in part, without the prior written approval of the SPOC.
9. For any procurement conducted by VITA, the entire procurement file shall be maintained by and kept in the designated VITA Contracts Administration location.
10. Upon request or when the Procurement Project/Evaluation Team Member's assigned duties associated with this project/solicitation are completed, the team member shall immediately deliver to the SPOC all Suppliers' proposals/offers along with all copies of any other materials and/or writings received or created in connection with or otherwise relating to this project/solicitation and any information derived therefrom.
11. When a Procurement Project/Evaluation Team Member has reason to believe that any unauthorized person(s) or third party has obtained or been provided access to or used data or information contained in Suppliers' proposals/offers or any information derived therefrom, such team Member shall notify the SPOC by telephone, email or facsimile transmission within two (2) business hours. In addition, such team Member will provide any and all documentation or other information requested by VITA pertaining to such unauthorized access or use of information or data and cooperate fully with VITA during its investigation of the matter.

### **Conflict of Interest**

Each Procurement Project/Evaluation Team Member should be acquainted with the *Code of Virginia*, [§ 2.2-4367](#), which includes *State and Local Government Conflict of Interests Act* ([§ 2.2-3100 et seq.](#)), the *Virginia Governmental Frauds Act* ([§ 18.2-498.1 et seq.](#)), Articles 2



(§ 18.2-438 et seq.) and 3 (§ 18.2-446 et seq.) of Chapter 10 of Title 18.2. and Article 6 (§ [2.2-4368](#) through [2.2-4371](#)). Once the Project Procurement/Evaluation Team Member has read the referenced *Virginia Code* sections above, if the team Member concludes that a conflict of interest exists in relation to this project/solicitation, the Member must inform the SPOC immediately and excuse themselves as a participant.